

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR.JUSTICE K.HARILAL

MONDAY, THE 28TH DAY OF SEPTEMBER 2015/6TH ASWINA, 1937

MACA.No. 1147 of 2014 ()

AGAINST THE AWARD IN OPMV 893/2006 of M.A.C.T.,KOTTAYAM
DATED 31-01-2014

APPELLANT(S)/3RD RESPONDENT:

SUNNY VARGHESE
S/O.VARGHESE, THEKKUMCHERIL HOUSE, KIZHAKKUBHAGOM KARA
ETTUMANOOR P.O., KOTTAYAM DISTRICT, PIN: 686 631.

BY ADVS.SRI.MATHEWS K.UTHUPPACHAN &
SRI.TERRY V.JAMES

RESPONDENT(S)/CLAIMANTS:

1. SHYAMALA DAS,
W/O.LATE DAS, KUPPAKARATHADATHIL, VEMPILLY,
KALIKAVU, KANAKKARI P.O., PIN: 686 632.

2. AJESH K.DAS,
S/O.LATE DAS, KUPPAKARATHADATHIL, VEMPILLY
KALIKAVU, KANAKKARI P.O., PIN: 686 632.

3. SAJINI K DAS
D/O.LATE DAS, KUPPAKARATHADATHIL, VEMPILLY
KALIKAVU, KANAKKARI P.O., PIN: 686 632.

4. KUMARAN KUTTAPPAN,
S/O.KUMARAN, KUPPAKARATHADATHIL, VEMPILLY
KALIKAVU, KANAKKARI P.O., PIN: 686 632.

5. MADHAVI KUTTAPPAN,
W/O.KUMARAN KUTTAPPAN, W/O.LATE DAS
KUPPAKARATHADATHIL, VEMPILLY, KALIKAVU
KANAKKARI P.O., PIN: 686 632.

6. ANISH,
S/O.THOMAS, MANAKKATTIL HOUSE, VAYALA P.O.
PIN: 686 587, KOTTAYAM DT.

7. THE NEW INDIA ASSURANCE CO. LTD.,
KOTTAYAM P.O., PIN: 686 631.

R7 BY ADV. SRI.A.A.ZIYAD RAHMAN(B/O,NO MEMO)

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 28-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R.RAMACHANDRA MENON
&
K.HARILAL, JJ**

M.A.C.A.No. 1147 of 2014

Dated this the 28th September,2015

JUDGMENT

Ramachandra Menon, J.

The challenge is against the award dated 31.1.2014 passed by the Motor Accidents Claims Tribunal, Kottayam in OP(MV).No.893 of 2006, whereby the award amount has been directed to be satisfied by the Insurance Company with liberty to have it recovered from the appellant, who was stated as the owner of the vehicle at the relevant time.

2. The case projected by the appellant is that he was the owner of the motorcycle bearing registration No.KL-5 B/886, which was sold by him on 5.6.2005 to the 6th respondent. After the sale as above, the vehicle met with an accident on 31.1.2006, whereby a person by name Das Kumaran was knocked down and it resulted in the death of

the person injured, which led to the Claim Petition preferred before the Tribunal.

3. It is stated that the appellant initially could not contest the matter as he was undergoing some treatment, whereupon an ex parte award came to be passed directing the 7th respondent insurer to satisfy the award amount of ₹3,98,400/- with interest, granting liberty to have the same reimbursed from the appellant. On coming to know about the same, the appellant filed an application to set aside the ex parte award, accompanied by a petition to condone the delay in filing the same. In the meanwhile, the Insurance Company satisfied the amount and proceeded further to get the amount recovered from the appellant. Aggrieved by the recovery steps, the appellant approached this Court by filing W.P(C).No.7350 of 2011, wherein an interim order was obtained with regard to recovery proceedings.

4. In the course of further proceedings, the Tribunal, as per order dated 15.11.2013, set aside the award dated 29.8.2009 to the extent the Insurance Company was permitted to realise the due amount from the appellant and thereafter the matter was considered with regard to the claim mooted by the appellant. Accordingly, a revised verdict was passed on 31.1.2014 holding that the rider of the vehicle was having no valid driving licence and that the appellant was liable to satisfy the amount to the insurer, who had already satisfied the claim of the third party. This, according to the appellant, is per se not legal so far as no sufficient opportunity was given to the appellant to establish the facts and figures and that no violation was established with regard to the breach of the statutory/policy condition with reference to the absence of driving licence. The learned counsel for the appellant made a reference to the law declared by the Supreme Court in ***National Insurance Company Limited v.***

Swaran Singh (2004 KHC 314) to the effect that the liability to establish the breach on the part of the insurer has not been considered by the Tribunal before mulcting the liability to the appellant/owner of the vehicle. It is also stated that the plea raised by the appellant as far as the transfer of ownership of the vehicle much prior to the date of accident was also not considered properly by the Tribunal.

5. This Court finds it difficult to accept the said proposition, particularly with regard to the lack of opportunity in so far as, despite lapse on the part of the appellant, the award passed by the Tribunal earlier was set aside pursuant to the filing of necessary proceedings in this regard and the appellant was permitted to adduce evidence, pursuant to which he was examined by the Tribunal as RW1. Admittedly, no document was produced from the part of the appellant as to the transfer of ownership of the vehicle to the 6th respondent. No

agreement regarding the sale or any proceedings are produced in this regard. The purpose of interference made by the Tribunal setting aside the earlier award was to give opportunity to the appellant in this regard, which was not effectively made use of by the appellant and as such, nobody else can be blamed other than the appellant in this regard.

6. With regard to the breach of conditions, it is to be noted that there is a clear finding of fact that the 6th respondent, who was the rider of the motorcycle, was not having valid driving licence at the relevant time. The said respondent chose to remain ex parte. The materials produced before the Tribunal, particularly, the Police records, refer to the factual position in this regard. Section 3 of the Motor Vehicles Act stipulates that nobody shall drive or cause to drive any vehicle without any valid driving licence. In so far as the appellant herein was the owner of the vehicle and so far as the alleged transfer of

ownership was not established, the appellant cannot be heard to say that he was not aware of the position with regard to the driving licence or that he was not having control over the vehicle when the vehicle ridden by the 6th respondent, who was the second respondent before the Tribunal, knocked down the deceased causing fatal injuries. That apart, law does not contemplate to extend any premium to the wrongdoer and the owner of the vehicle has necessarily to ensure that there shall be no threat to the lives and limbs of the pedestrians or others, who are proceeding along the road. The Motor Vehicles Act, of course, can be considered as a 'Welfare Legislation' in relation to road traffic accidents; but it is for the welfare of the victims/third parties and not for the welfare of the wrong-doers.

7. The learned counsel appearing for the Insurance Company submits that even though there is a deemed transfer of insurance along with transfer of ownership of

the vehicle, by virtue of Section 157 of the Motor Vehicles Act, till necessary procedure and proceedings are completed to effect entries in the relevant records, the registered owner could be liable as declared by this Court in **Baby varghese v. Anitha Roy** (2015(3) KLT 78). This Court is also aware of the decision rendered by the Supreme Court, reported in **P.P.Mohammed v. K.Rajappan** [(2008)17 SCC 624], holding that the person, who has actual possession to whom the vehicle is stated as transferred/sold as well as the person in whose name the RTO records stood, would be liable to 'third party', who was injured in the accident. This Court finds that the transfer of ownership of the vehicle has not been established by the appellant and in such circumstances, it cannot but be held that the appellant continued to be the owner of the vehicle, in respect of which registration still stands in the name of the appellant.

8. Coming back to the instant case, violation of the statutory/policy condition is clearly established and the motorcycle was being ridden without any valid driving licence. As such, the liberty granted to the Insurance Company to get the amount recovered from the appellant/owner of the vehicle, after satisfying the same to the claimant, does not require any interference.

The appeal fails and is dismissed.

P.R.RAMACHADRA MENON
JUDGE

K.HARILAL
JUDGE

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